

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DODO INTERNATIONAL, INC., *et al.*,

CASE NO. C20-1116-JCC

11 Plaintiffs,

ORDER

v.

12 RICHARD PARKER, *et al.*,

13 Defendants.

14

15 This matter comes before the Court on Plaintiffs' motions seeking the Court's leave to
16 serve several defendants by mail. (*See* Dkt. Nos. 24–29.) Having thoroughly considered the
17 motions and the relevant record, the Court hereby GRANTS the motion with respect to Eugene
18 Elfrank (Dkt. No. 25) and DENIES the motions with respect to the other defendants (Dkt. Nos.
19 24, 26, 27, 28, 29).

20 **I. BACKGROUND**

21 This case involves a contract dispute regarding purchase and sale agreements for
22 cannabidiol isolate. (Dkt. No. 41 at 6.) Plaintiffs previously sought the Court's permission to
23 serve Defendants Isotex Health, LLC, Jason Cross, Eugene Elfrank, Richard Parker, and
24 Alternative Resource, Inc. by mail and e-mail (Dkt. Nos. 8, 14, 15.) The Court denied those
25 motions because Plaintiffs did not cite authority showing they were entitled to the requested
26 relief. (Dkt. No. 21 at 1.) On October 28, 2020, Plaintiffs requested the Court's leave to serve the

1 following Defendants by mail: Cypress Creek Ventures, LLC, Eugene Elfrank, Isotex Health,
2 LLC, Jason Cross, Richard Parker, and Samuel Adams. (Dkt. Nos. 24–29.)

3 **II. DISCUSSION**

4 **A. Legal Standard**

5 A plaintiff may serve a defendant in the United States by “following state law for serving
6 a summons in an action brought in courts of general jurisdiction in the state where the district
7 court is located or where service is made.” Fed. R. Civ. P. 4(e)(1). Here, Plaintiffs seek to
8 proceed under Washington law. Under Washington law, the Court may not authorize service by
9 mail unless Plaintiffs show that they made reasonably diligent efforts to personally serve
10 Defendants, that service by publication would be justified under Washington law, and that
11 Defendants are as likely to receive actual notice from service by mail as they would from service
12 by publication. Wash. Sup. Ct. Civ. R. 4(d)(4); *Charboneau Excavating, Inc. v. Turnipseed*, 75
13 P.3d 1011, 1014 (Wash. Ct. App. 2003).

14 Washington permits service by publication in limited circumstances. *See* Wash. Rev.
15 Code § 4.28.100. For example, service by publication is permitted when a Washington resident
16 “keeps himself or herself concealed” within the state with the intent to “avoid the service of a
17 summons.” Wash. Rev. Code § 4.28.100(2); *see also Pascua v. Heil*, 108 P.3d 1253, 1257
18 (Wash. App. 2005) (service by mail is permissible upon Washington residents when they are
19 attempting to evade service). Service by publication is also permitted when a nonresident
20 defendant “has property [within Washington] and the court has jurisdiction of the subject of the
21 action,” Wash. Rev. Code § 4.28.100(3), and when the action is against a corporation “and the
22 proper officers on whom to make service do not exist or cannot be found,” Wash. Rev. Code
23 § 4.28.100(8).

24 1. Defendants Cypress Creek Ventures, LLC and Samuel Adams

25 Plaintiffs request to serve Defendants Cypress Creek Ventures, LLC (“Cypress Creek”)
26 and Samuel Adams by mail. (Dkt. Nos. 24, 29.) Plaintiffs allege that Samuel Adams was the

1 managing partner for Cypress Creek and seek to serve Cypress Creek and Samuel Adams at a
2 UPS Store in Kirkland, Washington. (See Dkt. Nos. 41 at 3, 24 at 2–3, 29 at 2–3.)

3 Plaintiffs fail to establish that serving Samuel Adams by mail is permissible under
4 Washington law. First, Plaintiffs fail to show they made reasonably diligent efforts to serve
5 Samuel Adams. “[W]here a plaintiff possesses information that might reasonably assist in
6 determining a defendant’s whereabouts, but fails to follow up on that information, the plaintiff
7 has not made the honest and reasonable effort necessary to allow for service by publication.”

8 *Boes v. Bisiar*, 94 P.3d 975, 978–79 (Wash. Ct. App. 2004) (quoting *Brenner v. Port of*
9 *Bellingham*, 765 P.2d 1333, 1336 (Wash. Ct. App. 1989)). Here, Plaintiffs allege that Samuel
10 Adams is domiciled in Spokane, Washington, but their affidavits do not show that Plaintiffs
11 made any effort to locate and serve Samuel Adams in Spokane. (Dkt. No. 41 at 3.) Therefore,
12 Plaintiffs have not shown reasonably diligent efforts to serve him personally. See *Parkash v.*
13 *Perry*, 700 P.2d 1201, 1203 (Wash. Ct. App. 1985) (finding inadequate showing of due diligence
14 where plaintiff did not demonstrate efforts to contact defendant’s employer or investigate
15 neighbor’s statement that defendant had moved); *Canal Ins. Co. v. Mengeste*, 2019 WL 2491951,
16 slip op. at 2 (W.D. Wash. 2019) (finding failure to show reasonably diligent effort where
17 plaintiff did not demonstrate efforts to locate and serve defendant in Ethiopia after learning of his
18 relocation). Second, Plaintiffs fail to demonstrate the “circumstances justifying service by
19 publication.” Wash. Sup. Ct. Civ. R. 4(d)(4); *see also* Wash. Rev. Code § 4.28.100 (listing
20 circumstances); *Boes*, 94 P.3d at 979–80 (“The affidavit must *clearly articulate facts* to meet the
21 required conditions . . .”). The Court therefore DENIES Plaintiffs’ motion for leave to serve
22 Samuel Adams by mail (Dkt. No. 29).

23 The Court also DENIES Plaintiffs’ motion to serve Cypress Creek by mail (Dkt. No. 24)
24 because Plaintiffs have not demonstrated the “circumstances justifying service by publication”
25 under Washington Superior Court Civil Rule 4(d)(4). Washington provides an alternative route
26 for Plaintiffs to serve an LLC’s registered agent by mail without the Court’s prior authorization,

1 but Plaintiffs may do so only if they have been unable to serve the LLC's registered agent with
2 reasonable diligence. *See Wash. Rev. Code §§ 25.15.026; 23.95.450(2).*

3 2. Defendant Eugene Elfrank

4 A process server attempted to personally serve Defendant Eugene Elfrank six times at his
5 last known address in Clinton, Washington. (Dkt. No. 25 at 6.) The process server declares that
6 during some of the service attempts, vehicles registered to Mr. Elfrank were present and
7 somebody was inside the residence, but nobody answered the door. (*Id.* at 6–7) This affidavit
8 shows that Plaintiffs have made diligent efforts to serve Eugene Elfrank, that Mr. Elfrank is a
9 Washington resident, and that he is attempting to evade service of process. The Court therefore
10 GRANTS Plaintiffs' motion for leave to serve Eugene Elfrank by mail (Dkt. No. 25). Plaintiffs
11 must follow Washington Superior Court Civil Rule 4(d)(4) in serving Mr. Elfrank.

12 3. Defendants Isotex Health, LLC and Jason Cross

13 Plaintiffs also request to serve Isotex Health, LLC and Jason Cross by mail. (Dkt. Nos.
14 26, 27.) Plaintiffs attempted to serve Isotex Health, LLC by serving Jason Cross at his Texas
15 residence, and the process server in Texas believes that Jason Cross is actively evading service.
16 (Dkt. Nos. 26 at 5, 27 at 5.) However, Washington law does not permit service by publication
17 under these circumstances. *See Wash. Rev. Code § 4.28.100.* Service by publication is available
18 when a Washington resident evades service, Wash. Rev. Code § 4.28.100(2), but Jason Cross is
19 not a Washington resident, (*see* Dkt. Nos. 26 at 2, 27 at 2). Service by publication is also
20 available when a nonresident defendant has property in Washington and the court has subject-
21 matter jurisdiction in the action, but Plaintiffs fail to establish those circumstances here. *See*
22 Wash. Rev. Code § 4.28.100(3). Plaintiffs must show either that Washington law allows service
23 by mail or that Texas law does. *See Fed. R. Civ. P. 4(e)(1)* (permitting service pursuant to state
24 law “in the state where the district court is located or where service is made”). Plaintiffs have not
25 done so for either Isotex Health, LLC or Jason Cross. Accordingly, the Court DENIES Plaintiffs'
26 motions for leave to serve these defendants by mail (Dkt. Nos. 26, 27).

1 4. Defendant Richard Parker

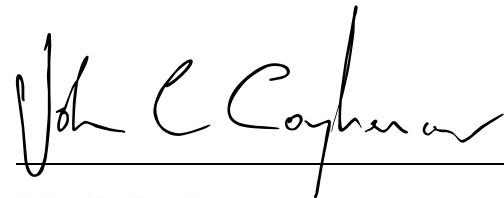
2 Plaintiffs unsuccessfully attempted to serve Richard Parker at an address in Irvine,
3 California. (Dkt. No. 28 at 5.) Plaintiffs allege that the process server communicated with the
4 building's property manager, who confirmed that Richard Parker no longer resides at that
5 address, but the process server's declaration does not include this information and Plaintiffs do
6 not include any other affidavit that does. (*See id.* at 2.) Even if the Court were to consider this
7 information, Plaintiffs have failed to demonstrate the "circumstances justifying service by
8 publication." Wash. Sup. Ct. Civ. R. 4(d)(4); *see also* Wash. Rev. Code § 4.28.100 (listing
9 circumstances); *Boes*, 94 P.3d at 979–80 ("The affidavit must *clearly articulate facts* to meet the
10 required conditions . . ."). Plaintiffs must show either that Washington law allows service by
11 mail or that the law "where service is made" does. *See* Fed. R. Civ. P. 4(e)(1). Plaintiffs have
12 failed to do so. Accordingly, the Court DENIES Plaintiffs' motion for leave to serve Richard
13 Parker by mail (Dkt. No. 28).

14 **III. CONCLUSION**

15 For the foregoing reasons, the Court GRANTS Plaintiffs' motion for leave to serve
16 Eugene Elfrank by mail (Dkt. No. 25) and DENIES Plaintiffs' motions for leave to serve
17 Cypress Creek Ventures, LLC, Isotex Health, LLC, Jason Cross, Richard Parker, and Samuel
18 Adams by mail (Dkt. Nos. 24, 26, 27, 28, 29). Plaintiffs must follow Washington Superior Court
19 Civil Rule 4(d)(4) in serving Eugene Elfrank.

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21 DATED this 19th day of February 2021.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE